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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FOSTER, JIMMY G

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/035,204

Applicant(s)

DE LAFORCADE, VINCENT

Examiner

Jimmy G Foster

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. Claims 1-63 are finally rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitation regarding the first opening being unobstructed by the safety member is considered to be new matter since an obstruction can be something which hinders flow. Therefore, if an opening is unobstructed by a member, the member will not hinder the potential maximum flow through the opening. Applicant's protrusion/safety member 30 is disposed within the opening of the container 10 and therefore must obstruct (i.e. hinder potential maximum flow through) the opening of the container 10.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-8, 11-13, 15, 16, 18, 20, 23, 25, 27-43, 46-48, 50, 52 and 55-63 are rejected under 35 U.S.C. § 102(b) as being

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anticipated by Gonclaves (5,209,565). The assembly of Gonclaves includes a system for mixing two products. The system includes first and second containers 2,3, each including a coupler (8,21) and a closure cap/stopper/cover (9,16). The container 2 further includes a film seal/tearable cap 7. The container 3 further includes a cutter at collar 19. Container 3 also comprises a neck at 28, a hollow shaft at 20, and a head at capsule 15. Container 2 constitutes a flexible tube.

Regarding any of claims 1-8, 11, 12, 15, 16, 25, 27-33, 35-43, 46, 47, 55-61 and 63 of Applicant, the second container may be considered to be defined by container 2 of Gonclaves, the seal may be considered to be defined by the film seal 7, and first container may be considered to be defined by the container 3, and the safety member may be considered to be defined by the cover 16. The safety member/cover 16 is blunt and is capable of abutting with the seal 7 when the stopper 9 is removed from the second container since the seal 7 is disposed on the edge of the neck 6 of the container 2 (col. 3, lines 25-26). Additionally, the cover 16 also may be said to project beyond the opening of the first container (see Fig. 1).

The cover 16 defines a safety member because when the cover is on the first container 3, it prevents the seal 7 from being punctured by the cutter 19. Moreover, the cover 16 is capable of being removed from the first container 3. Therefore the

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container opening of container 3 is unobstructed by the cover when the cover has been removed from the container.

Regarding claims 13, 18, 20, 48, 50, 52 and 64-66, the collar 19 may alternatively be considered to define a safety member since the collar will be resisted by the seal 7 somewhat before the collar 19 cuts the seal. Figure 1 shows that the collar 19 extends through the opening of the container 3. The collar 19 will stay in place after flow has been established between the containers 2 and 3.

Regarding any of claims 1, 3-6, 11, 23, 27, 28, 30-32, 34-36-41, 46, 55, 56, 58-60, 62 and 63 of Applicant, the assembly/system may of Gonclaves may be considered in an alternative manner. The second container may be considered to be defined by container 3 of Gonclaves, the seal may be considered to be defined by the cover 16, and first container may be considered to be defined by the container 2, and the safety member may be considered to be defined by the stopper 9. The cover 16 seals the opening of the container 3. The stopper 9 is blunt and is capable of pressing against the exterior of the seal 16. In the closed position the stopper 9 projects beyond the opening of the container 2.

The stopper acts as a safety member since it prevents the cutting of element 7 while the stopper is closed on the container 2 and since the stopper otherwise prevents the opening of the container 2.

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4. Claims 1, 18, 19, 36, 50 and 51 are rejected under 35 U.S.C. § 102(b) as being anticipated by Taylor et al (5,072,872). In the reference of Taylor et al, there is provided a first container 2, a second container 6, a coupler 22 on the first container, a coupler 23 on the second container, and a seal 9 on the second container. The dish 18 of the first container includes a nozzle 5. A stop 12 covers the opening of the nozzle.

Upon breaking of the stop off the nozzle the open tip is disposed in the seal inlet 8. The nozzle becomes connected by snap-fit with respect to elements rib and groove elements 36,37. Therefore there will be some resistance to the nozzle entering the inlet 8 to the extent in which the nozzle displaces the seal/displacing cap 9. Accordingly, the examiner asserts that the nozzle of Taylor et al defines a safety member since the tip of the nozzle will press against the seal 9 somewhat before the seal is displaced. The stop 12 protects the nozzle/safety member 5 but is frangibly removed therefrom.

Once the stop 12 is broken off, as disclosed, the examiner asserts that the stop will not obstruct the opening of the first container 2.

5. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject

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matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 24 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Gonclaves (above). The material of polyethylene and its properties, such as flexibility and weldability, are known. Selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416. Accordingly, to have used any known material for the tube of Gonclaves, including polyethylene, such as for the suitability with respect to flexibility or weldability, would have been obvious.

7. Claims 26 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Gonclaves (above). The material of aluminum and its properties, such as gas impermeability or frangibility, are known. Selection of a known material based upon its suitability for the intended use thereof generally will not support patentability. In re Leshin, 125 USPQ 416. Accordingly, to have used any known material for the tube of Gonclaves, including aluminum, such as for the suitability with respect to gas impermeability, would have been obvious. Moreover, to have used any known material for the seal of Gonclaves, including

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aluminum, such as for the suitability with respect to frangibility, would have been obvious.

8. Claims 9, 10, 14, 17, 21, 22, 44, 45, 49, 53 and 54 would be allowable if rewritten to overcome the rejection under 35 U.S.C. § 112 and to include all of the limitations of the base claim and any intervening claims.

9. Applicant's arguments filed September 30, 2003 have been fully considered but they are not deemed to be persuasive. The cover 16 of Gonclaves and the stop 12 of Taylor et al are removed when the containers are brought together, or are to be brought together, whereupon removal prevents obstruction. Therefore, Applicant's amendment to independent claim 1 and 36, besides adding inaccuracy/new matter to the claimed subject matter, fails to overcome the subject matter of either reference, where so applied.

Regarding new claims 64-66, these claims also do not distinguish over the Gonclaves reference, for the reason stated immediately above or for the reason explained in the rejection with respect to collar 19.

Applicant's disclosed safety member structure appears to be capable of supporting claimed limitations to a safety member in Applicant's claims 1 and 36 that will distinguish over the prior

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art, including Gonclaves and Taylor et al. As yet, however, Applicant's present limitations have not distinguished these claims over such references.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

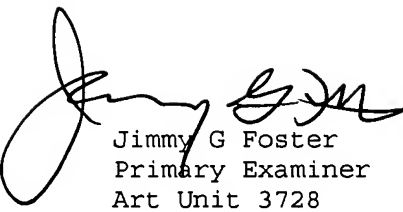
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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Jimmy G Foster
Primary Examiner
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JGF

8 December 2003